

HOUSE BILL REPORT

SHB 2527

As Amended by the Senate

Title: An act relating to the energy facility site evaluation council.

Brief Description: Regarding the energy facility site evaluation council.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris, Chase, Hudgins and Jacks).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/18/10, 1/28/10 [DPS];
Ways & Means: 2/3/10, 2/8/10 [DPS(TEC)].

Floor Activity:

Passed House: 2/15/10, 96-2.
Senate Amended.
Passed Senate: 3/3/10, 43-2.

Brief Summary of Substitute Bill

- Authorizes the Energy Facility Site Evaluation Council (EFSEC) to provide site certification for commercially operated nuclear power facilities of any size and biofuel refineries capable of processing more than 25,000 barrels per day.
- Transfers the administrative and staff support for the EFSEC from the Department of Commerce to the Utilities and Transportation Commission.
- Increases the deposit amounts for energy facility site certification applications and for energy facility site certification agreements.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives McCoy, Chair; Finn, Vice Chair; Carlyle, Eddy, Hasegawa, Hinkle, Hudgins, Jacks, Morris, Takko and Van De Wege.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 6 members: Representatives Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Condotta, McCune, Nealey and Taylor.

Staff: Scott Richards (786-7156).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill by Committee on Technology, Energy & Communications be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Seaquist.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross and Schmick.

Staff: Steve Smith (786-7178).

Background:

Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) provides a "one-stop" siting process for major energy facilities in Washington. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities in Washington. The EFSEC specifies the conditions of construction and operation. If approved, a site certification agreement is issued in the place of any other individual state or local agency permits. The EFSEC also manages an environmental and safety oversight program of facility and site operations.

Members of the EFSEC.

The EFSEC is comprised of a chair appointed by the Governor and representatives from five state agencies. Agencies represented on the EFSEC include: (1) the Department of Commerce; (2) the Department of Ecology; (3) the Department of Fish and Wildlife; (4) the Department of Natural Resources; and (5) the Utilities and Transportation Commission. When an application to site a facility is submitted to the EFSEC, representatives from particular cities, counties, or port districts potentially affected by the project are added to the EFSEC for proceedings related to the project.

Administrative and Staff Support.

The administrative and staff support for the EFSEC is provided by the Department of Commerce and it provides supervisory authority over the staff of the EFSEC and employs personnel as are necessary to implement the duties of the EFSEC.

Energy Facilities Subject to the EFSEC.

The EFSEC's siting jurisdiction includes the following: (1) large natural gas and oil pipelines; (2) thermal electric power plants 350 megawatts (MWs) or greater and their dedicated transmission lines; (3) new oil refineries or large expansions of existing facilities; and (4) underground natural gas storage fields. In addition, energy facilities of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) can opt-in to the EFSEC process as well as certain electrical transmission lines. The EFSEC's jurisdiction does not extend to hydro based power plants or thermal electric plants that are less than 350 MWs.

Site Certification Process.

The EFSEC certification process provides applicants an opportunity to present their proposals, allows interested parties to express their concerns about the proposed project to the EFSEC, and permits the EFSEC to address issues related to the application.

There are six major steps in the site certification process: (1) application submittal; (2) application review; (3) initial public hearings; (4) environmental impact statement; (5) adjudicative proceedings and permits review; and (6) recommendation to the Governor. Each step has specific requirements the applicant and the EFSEC must follow to ensure a comprehensive and balanced review of the project.

The Site Certification Application Deposit.

A site certification application to the EFSEC must be accompanied by a \$45,000 deposit that is applied toward the direct costs of processing the application, such as the retention of an independent consultant and a hearing examiner. Additionally, this deposit may pay such reasonable costs as are actually and necessarily incurred by the EFSEC and its members in processing the application.

Site Certification Agreement Deposit.

Within 30 days of execution of the site certification agreement, the site certificate holder must deposit \$20,000. Reasonable and necessary costs of the EFSEC directly attributable to inspection and determination of compliance by the certificate holder with the terms of the certification are charged against the deposit.

Summary of Substitute Bill:

Expansion of Facility Site Certification Authority.

The EFSEC is authorized to review and provide site certification for: (1) any commercially operated nuclear power facility; and (2) biofuel refineries capable of processing more than 25,000 barrels per day of biofuel into refined products.

Transfer of Administrative and Staff Support.

The administrative and staff support for the EFSEC is transferred from the Department of Commerce to the Utilities and Transportation Commission (UTC). The UTC has supervisory

authority over the staff of the EFSEC and must employ personnel to implement the duties of the EFSEC.

Application Deposit for Site Certification.

At the time of application, site certification applicants are required to deposit \$50,000, or such greater amount as may be specified by the EFSEC after consultation with the applicant.

Costs that may be charged against the deposit include, but are not limited to, independent consultants costs, councilmember's wages, employee benefits, costs of a hearing examiner, costs of a court reporter, staff salaries, wages and employee benefits, goods and services, travel expenses, and miscellaneous direct and indirect expenses as arise directly or indirectly from processing an application.

Site Certification Agreement Deposit.

Within 30 days of execution of the site certification agreement, a site certificate holder is required to deposit \$50,000, or such greater amount as may be specified by the EFSEC after consultation with the certificate holder. Each site certificate holder is required to pay reasonable costs as are necessarily incurred by the EFSEC for inspection and determination of compliance by the certificate holder with the terms of the certification.

Costs that may be charged against the deposit include, but are not limited to, councilmember's wages, employee benefits, costs of a hearing examiner, costs of a court reporter, staff salaries, wages and employee benefits, contracts, goods and services, travel expenses, and miscellaneous direct and indirect expenses as arise directly or indirectly from inspection and determination of compliance by the certificate holder with the terms of the certification.

In addition to paying the reasonable costs associated with monitoring the effects of construction and the operation of an energy facility, the certificate holder is required to pay reasonable costs associated with site restoration of the facility.

Allocation of Rulemaking Costs.

Reasonable and necessary costs incurred by the EFSEC in adopting rules, and in implementing and administering its statutory duties may be assessed against applicants and certificate holders.

Reasonable and necessary costs may not exceed \$50,000 per applicant or certificate holder. Beginning July 1, 2015, reasonable and necessary costs may be \$50,000 per applicant or certificate holder plus the consumer price index as calculated by the Office of Financial Management. Moneys assessed and collected by the EFSEC from applicants and certificate holders must be dispersed by the manager of the EFSEC.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment specifies that the EFSEC has siting jurisdiction over any nuclear power facility, if its primary purpose is to produce or sell electricity. The House bill gave EFSEC jurisdiction over any commercially operated nuclear power facility. The transfer of the EFSEC from the Department of Commerce to the Utilities and Transportation Commission is removed in the Senate amendment. The Senate amendment specifies that the EFSEC does not have jurisdiction over biofuel refineries where biofuel production is undertaken at existing operating industrial facilities. The Senate amendment eliminates the requirement that applicants and certificate holders must pay for the indirect costs incurred by the EFSEC in processing site certification applications and in inspecting facilities that have received a site certification. The Senate amendment specifies that the rulemaking costs associated with this bill must be proportionately divided among the certificated holders and applicants directly affected provisions in the bill. The House bill gave the EFSEC authority to assess against an applicant or a certificate holder a charge up to fifty thousand dollars.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Technology, Energy & Communications):

(In support) This bill in part deals with some administrative issues related to the EFSEC and expands the type of facilities that the EFSEC can site. Nuclear reactor technologies have changed a great deal in the last few years and have provided the opportunity to begin using a new generation of small-scale nuclear reactors. This bill would authorize the EFSEC to site these new nuclear reactors and expand the EFSEC's authority to site large-scale biofuel facilities.

(In support with concerns) There is a compelling state interest to be involved in the siting of small-scale nuclear facilities. The Counsel can easily be paid for by the applicant. The Counsel is needed on the local level. The public's interest on the siting of energy facilities often goes beyond county boundaries and has statewide impacts. If new nuclear energy facilities are developed in Washington, a process will be needed that is open to the public. The EFSEC process is structured to allow for this process. There is concern about the fee structure for the Council. Having the applicant pay for the Counsel may set up a situation where there is a potential conflict of interest. The Council should focus on environmental quality and not be concerned about the "not in my backyard" issues. The transfer of the EFSEC from the Commerce to the UTC should be handled in the Governor's request bill dealing with the restructuring of the Commerce.

(With concerns) It is important to clearly maintain the independence of the EFSEC from the UTC and it is not clear how this will be insured. The ability of EFSEC to pass on additional costs related to other EFSEC duties not related to site certification application and site compliance monitoring should be clarified and limited. The funding levels allowed for the Counsel is not limited and there needs to be clearer guidelines on how the Counsel will participate in processes on the local level.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

(In support) This is a bit of a cleanup bill to see how the energy market is working with statutes. Currently there is a 350 megawatts (MW) threshold on the thermal plants that Energy Facility Site Evaluation Council (EFSEC) can look at for state permitting. Most of the new nuclear energy designs are pebble bed-design reactors in the 40 MW range. We don't want to have a local government siting a nuclear facility, and would instead want the state to retain jurisdiction in these cases. The reason that EFSEC was originally created back in the early 1970s was specifically to look at siting of nuclear facilities, and the megawatt threshold was pushed up in the 2000 energy crisis in order to speed up the build out of natural gas combined cycle turbines. Technology has developed in a different way in the nuclear space and this would give the state jurisdiction over nuclear facilities. Another portion of the bill recognizes the fact that EFSEC has been moved over to the UTC building. The fee issue that drove the fiscal note comes from a discussion about whether the counsel should be paid by the applicant or the Attorney General, and that section was removed from the bill as it came out of the Technology, Energy, and Communications Committee. Right now, 100 percent of the costs are recovered for processing an application, and another fee of up to \$50,000 per applicant can be assessed for indirect costs.

(Opposed) None.

Persons Testifying (Technology, Energy & Communications): (In support) Representative Morris, prime sponsor; Stephen Posner, Washington State Energy Facility Site Evaluation Council; and Jim Roland, Energy Northwest.

(In support with concerns) James Luce, Washington State Energy Facility Site Evaluation Council; Carrie Dolwick, Northwest Energy Coalition; and Dave Danner, Washington State Utilities and Transportation Commission.

(With concerns) Chris McCabe, Association of Washington Business; and Ken Johnson, Puget Sound Energy.

Persons Testifying (Ways & Means): Representative Morris, prime sponsor.

Persons Signed In To Testify But Not Testifying (Technology, Energy & Communications): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.